

# COUDERT BROTHERS LLP

ATTORNEYS AT LAW

1627 I STREET, N.W.  
WASHINGTON, D.C. 20006-4007  
TEL: (202) 775-5100  
FAX: (202) 775-1168  
WWW.COUDERT.COM

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June 4, 2003

### Via Electronic Filing

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Vistrionix, Inc.  
236 Massachusetts Avenue, N.E. Suite 110  
Washington, DC 20002

Re: In the Matter of Schools and Libraries Universal Support Mechanism,  
CC Docket No. 02-6 and In the Matter of Federal Joint Board on  
Universal Service, CC Docket No. 96-45

Subject: Written *Ex Parte* to Supplement Request for Immediate Relief by the  
State of Tennessee

Dear Ms. Dortch:

The State of Tennessee hereby submits this *ex parte* to supplement its Request for Immediate Relief filed on April 17, 2003 in the above-referenced dockets with Wireline Competition Bureau of the Federal Communications Commission (the "Commission").

In the event that there are any questions concerning this submission, please communicate with the undersigned.

Sincerely yours,



Matthew J. Vitale  
William K. Coulter  
Counsel for State of Tennessee

Enclosures

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June 4, 2003

### Via Electronic Filing

William Maher  
Chief, Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: In the Matter of Schools and Libraries Universal Support Mechanism,  
CC Docket No. 02-6 and In the Matter of Federal Joint Board on  
Universal Service, CC Docket No. 96-45

Subject: Written *Ex Parte* Presentation to Supplement Request for Immediate  
Relief by the State of Tennessee

Dear Mr. Maher:

The purpose of this *ex parte* letter is to confirm our telephone conversation of June 2, 2003 regarding the State of Tennessee's (hereinafter the "State") Request for Immediate Relief, filed on April 17, 2003 and submitted in the above referenced dockets.<sup>1</sup> This letter is submitted to place in the record the matters raised during our conversation and initially at a meeting between the Wireline Competition Bureau and the State on March 21, 2003, and to keep you advised of the dire situation in Tennessee and its need for immediate relief.

First, the State has been advised that, absent immediate action by the Commission, as many as 1,900 Tennessee schools and 900,000 children and teachers will be without critical Internet services as early as next week. These services afford students and teachers extended classroom access, teacher year-end grading and AP evaluation access, year-round classroom session access and summer program access. Due to the vastness of the underlying network, the scarcity of large independent suppliers and vendors in rural areas, the long delays in payments for rendered services, and the absence of alternatives, the potential loss of these valuable services has reached a crisis stage. Furthermore, the State is unable to address this

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<sup>1</sup> See Request for Immediate Relief by the State of Tennessee to Change its Service Provider for Funding Year 2002, filed April 17, 2003. The State of Tennessee's Department of Education was the named applicant for funding under Year 2002 of the federal support mechanism for schools and libraries ("E-Rate Program").

situation fully on an ad-hoc basis, as it might be able to do with a single school or a district. To be clear, the end of some scheduled classes does not alleviate the 2002 crisis, particularly when there are year-round classes, year-end administrative matters and critical service continuity issues for 2003 and 2004.

Second, the State has been advised that several long distance providers, and as many as three local and regional carriers providing approximately 75% of local connections for telecom services to support Internet services, now have plans to terminate connections, absent payments or reasonable assurances of payments from the FCC. These critical vendors have followed the progress of the dialogue between the State and the FCC over the last six weeks and, based on that progress, including the unanimous support voiced in the public comments to the FCC, have been willing to extend services without payment. However, the State has been advised that, in the absence of immediate FCC action to address the situation, the service will be terminated. Some carriers are 6 months or more in arrears for non-payment based on the lack of federal funding. These carriers simply cannot continue to self-fund and absorb costs, or to risk non-payment now and moving forward into the next school year.

Third, if the Internet service is reduced or terminated, the State has been advised that the network components necessary to keep the network running cannot be kept available to facilitate the full reinstitution of terminated or diminished ISP service, even upon eventual payment. Reinstating these network components would take in excess of a year and cost more than the ongoing current service. In addition, the State has been advised that it could take up to 6 months or longer to get network circuits re-installed. And they will not be reinstalled until all bills are paid and evidence is presented to ensure future payments. Effectively, this means that absent immediate FCC action, there is no assurance that the network components underlying the State's Internet network can be and will be operational for the next two school years.

Fourth, the State has been advised that many critical employees of Education Networks of America, Inc. ("ENA"), the State's Year 2002 service provider, are not being paid a portion of their wages during this crisis. If these employees do not immediately receive some assurances of payment by the FCC plan, then they may not be able to continue operating in their critical capacity. These individuals, who have enormous technological expertise, are critical to the operation of the network and cannot be easily replaced, especially if the issue of funding has not been resolved. Further, these employees may be lost, not only for this year, but also for future years, with all of the additional training and replacement costs that this entails.

Fifth, ENA and its bankers have advised the State that absent immediate federal funding, ENA will likely lose its ability to guarantee its performance through a bank Letter of Credit, as required by ENA's contract. In addition, it is our understanding that further extensions will not be granted related to securing bank financing. Without these performance guarantees, the schools may face a substantial risk in the event of non-performance by ENA.

Also, the schools may not have the performance funds available to reacquire replacement services.

Sixth, the State has not asked for relief for Funding Year 2003. The State is fully aware that 2003 may present different issues and require a different analysis. However, unless a remedy is available for Year 2002, the State has been advised that underlying foundation network components will not be available for 2003 or 2004 for access by the Year 2003 service provider. Thus, absent FCC immediate action addressing Year 2002, Year 2003 and 2004 is effectively being prejudged by the FCC. FCC action is therefore critical for the continued survival and operation of the State's Internet network.

Seventh, it is important to note that the State's and BellSouth's (or other substitute carrier's) agreement to keep any USF money from ENA eliminates any risk that the release of funding will interfere with or prejudice any investigation of the provider.

Based on the above real and pending consequences, the State respectfully requests the FCC's immediate and urgent attention to this matter. As you can see, the situation facing the State is "dire" and is so extraordinary as to be non-precedental. The extreme number of schools and students, the inability of any entity but the FCC to remedy the situation at this juncture, and the absence of any other remedial alternative supports the State's request for immediate action.

In the event that there are any questions concerning this submission, please communicate with the undersigned.

Sincerely yours,



Matthew Vitale  
William K. Coulter  
Counsel for State of Tennessee's  
Department of Education